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THE TENURE OF JUDICIAL OFFICE.

A VERY striking passage in the fine address of Joseph H. Choate in the Court House in Boston, on the occasion of unveiling the statue of Rufus Choate, on October 15 last, has drawn attention to the speech of the distinguished man then commemorated on the tenure of judicial office, in the Massachusetts Constitutional Convention of 1853. The tribute to that speech and to the doctrine which it advocated, paid by the distinguished New York advocate, was all the more impressive when one remembers that he has practised all his life under an elective judiciary. His fervent and solemn admonition to the lawyers of his native State to maintain their own system, comes therefore from an expert of the highest authority, not merely as regards general forensic experience, but also as touching a knowledge and observation of both the systems in question; for his practice before the Federal Courts has been only less extensive than his State practice.

It has seemed well to reproduce and make accessible both the original address and the remarks of Mr. Joseph Choate about it. It is not an inappropriate moment to reconsider this subject when the grievous miscarriage in the State of Minnesota last autumn is still fresh in men's minds, — whereby the electors, out of the mere excess of party spirit, refused a re-election to the Supreme Court to the ablest judge upon that bench, a judge of very distinguished capacity, hardly second to any judge on any bench in this country, Mr. Justice Mitchell. Mr. Joseph H. Choate said: —

"I regard the magnificent argument which he made on judicial tenure in the Constitutional Convention of 1853 as the greatest single service which he ever rendered to the profession, and to the Commonwealth of which he was so proud. You will observe, if you read it, that it differs radically in kind, rather than in degree, from all his other speeches, arguments and addresses.

"Discarding all ornament, restraining with careful guard all tendency to flights of rhetoric, in clear and pellucid language, plain and unadorned, laying bare the very nerve of his thought, as if he were addressing, as no doubt he meant to address and convince, not alone his fellow delegates assembled in the Convention, but the fishermen of Essex, the manufacturers of Worcester and Hampden, and the farmers of Berkshire, aye, all the men and women of the Commonwealth, of that day and of all days to come, he pleads for the continuance of an appointed judiciary, and for the judicial tenure during good behavior, as the only safe foundations of justice and of liberty.

"He draws the picture of 'a good judge profoundly learned in all the learning of the law;' 'not merely upright and well intentioned;' 'but the man who will not respect persons in judgment;' standing only for justice, 'though the thunder should light upon his brow,' while he holds the balance even to protect the humblest and most odious individual against all the powers and the people of the Commonwealth; and 'possessing at all times the perfect confidence of the community, that he bear not the sword in vain.' He stands for the existing system which had been devised and handed down by the Founders of the State, and appeals to its uniform success in producing just that kind of a judge; to the experience and example of England since 1688; to the Federal system which had furnished to the people of the Union such illustrious magistrates; and finally to the noble line of great and good judges who had from the beginning presided in your courts. He then takes up and disposes of all objections and arguments drawn from other States which had adopted an elective judiciary and shortened terms, and conclusively demonstrates that to abide by the existing Constitution of your judicial system, was the only way to secure to Massachusetts forever 'a government of laws and not of men.'

"It was on one of the red-letter days of my youth that I listened to that matchless argument, and when it ended, and the last echoes of his voice died away as he retired from the old Hall of the House

of Representatives, leaning heavily upon the arm of Henry Wilson all crumpled, dishevelled and exhausted, I said to myself that some virtue had gone out of him — indeed some virtue did go out of him with every great effort — but that day it went to dignify and ennoble our profession, and to enrich and sustain the very marrow of the Commonwealth. If ever again that question should be raised within her borders, let that argument be read in every assembly, every church and every school-house. Let all the people hear it. It is as potent and unanswerable to-day, and will be for centuries to come, as it was nearly half a century ago when it fell from his lips. Cling to your ancient system, which has made your Courts models of jurisprudence to all the world until this hour. Cling to it, and freedom shall reign here until the sunlight shall melt this bronze, and justice shall be done in Massachusetts, though the skies fall."

The speech of Rufus Choate was made on July 14, 1853, and is found in the "Addresses and Orations of Rufus Choate" (Boston: Little, Brown, and Co. 1878). We reproduce it with the consent of the publishers and the owners of the copyright. It may be found also in the second volume of the "Life and Works of Rufus Choate," by Professor Brown, and at p. 799 of the second volume of "The Debates in the Constitutional Convention," of 1853, published by the State of Massachusetts in that year. Mr. Choate said: —

"It is not my purpose to enter at large on the discussion of this important subject. That discussion is exhausted; and if it is not, your patience is; and if not quite so, you have arrived, I apprehend, each to his own conclusion. But as I had the honor to serve on the committee to whom the department of the judiciary was referred, I desire to be indulged in the statement of my opinions abstaining from any attempt elaborately to enforce them.

"I feel no apprehension that this body is about to recommend an election of judges by the people. All appearances; the votes taken; the views disclosed in debate; the demonstrations of important men here, indicate the contrary. I do not mean to say that such a proposition has not been strenuously pressed, and in good faith; yet, for reasons which I will not consume my prescribed hour in detailing, there is no danger of it. Whether members are ready for such a thing or not, they avow, themselves, that they do not think the people are ready.

"What I most fear is, that the deliberation may end in limiting

the tenure of judicial office to a term of years, seven or ten; that in the result we shall hear it urged, 'as we are good enough not to stand out for an election by the people, you ought to be capable of an equal magnanimity, and not stand out for the present term of good behavior;' and thus we shall be forced into a compromise in favor of periodical and frequent appointment, — which shall please everybody a little.

"I have the honor to submit to the convention that neither change is needed. Both of them, if experience may in the least degree be relied on, are fraught with evils unnumbered. To hazard either, would be, not to realize the boast that we found the capitol, in this behalf, brick, and left it marble; but contrariwise, to change its marble to brick.

"Sir, in this inquiry what mode of judicial appointment, and what tenure of judicial office, you will recommend to the people, I think that there is but one safe or sensible mode of proceeding, and that is to ascertain what mode of appointment, and what length and condition of tenure, will be most certain, in the long run, guiding ourselves by the lights of all the experience and all the observation to which we can resort, to bring and keep the best judge upon the bench — the best judge for the ends of his great office. There is no other test. That an election by the people, once a year, or an appointment by the governor once a year, or once in five, or seven, or ten years, will operate to give to an ambitious young lawyer (I refer to no one in this body) a better chance to be made a judge — as the wheel turns round — is no recommendation, and is nothing to the purpose. That this consideration has changed, or framed, the constitutions of some of the States whose example has been pressed on us, I have no doubt. Let it have no weight here. We, at least, hold that offices, and most of all the judicial office, are not made for incumbents or candidates, but for the people; to establish justice; to guarantee security among them. Let us constitute the office in reference to its ends.

"I go for that system, if I can find it or help find it, which gives me the highest degree of assurance, taking man as he is, at his strongest and at his weakest, and in the average of the lot of humanity, that there shall be the best judge on every bench of justice in the commonwealth, through its successive generations. That we may safely adopt such a system; that is to say, that we may do so and yet not abridge or impair or endanger our popular polity in the least particular; that we may secure the best possible

judge, and yet retain, ay, help to perpetuate and keep in health, the utmost affluence of liberty with which civil life can be maintained, I will attempt to show hereafter. For the present, I ask, how shall we get and keep the best judge for the work of the judge?

"Well, Sir, before I can go that inquiry, I must pause at the outset, and, inverting a little what has been the order of investigation here, ask first, who and what is such a judge; who is that best judge? what is he? how shall we know him? On this point it is impossible that there should be the slightest difference of opinion among us. On some things we differ. Some of you are dissatisfied with this decision or with that. Some of you take exception to this judge or to that. Some of you, more loftily, hold that one way of appointing to the office, or one way of limiting the tenure, is a little more or less monarchical, or a little more or less democratic than another — and so we differ; but I do not believe there is a single member of the convention who will not agree with me in the description I am about to give of the good judge; who will not agree with me that the system which is surest to put and to keep him on the bench is the true system for Massachusetts.

"In the first place, he should be profoundly learned in all the learning of the law, and he must know how to use that learning. Will any one stand up here to deny this? In this day, boastful, glorious for its advancing popular, professional, scientific, and all education, will any one disgrace himself by doubting the necessity of deep and continued studies, and various and thorough attainments, to the bench? He is to know, not merely the law which you make, and the legislature makes, not constitutional and statute law alone, but that other ampler, that boundless jurisprudence, the common law, which the successive generations of the State have silently built up; that old code of freedom which we brought with us in The Mayflower and Arabella, but which in the progress of centuries we have ameliorated and enriched, and adapted wisely to the necessities of a busy, prosperous, and wealthy community, — that he must know. And where to find it? In volumes which you must count by hundreds, by thousands; filling libraries; exacting long labors, — the labors of a lifetime, abstracted from business, from politics; but assisted by taking part in an active judicial administration; such labors as produced the wisdom and won the fame of Parsons and Marshall, and Kent and Story, and Holt and Mansfield. If your system of appointment and tenure

does not present a motive, a help for such labors and such learning; if it disparages them, in so far it is a failure.

"In the next place, he must be a man, not merely upright, not merely honest and well intentioned, — this of course, — but a man who will not respect persons in judgment. And does not every one here agree to this also? Dismissing, for a moment, all theories about the mode of appointing him, or the time for which he shall hold office, sure I am, we all demand that, as far as human virtue, assisted by the best contrivances of human wisdom, can attain to it, he shall not respect persons in judgment. He shall know nothing about the parties, everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If on one side is the executive power and the legislature and the people, — the sources of his honors, the givers of his daily bread, and on the other an individual nameless and odious, his eye is to see neither, great nor small; attending only to the 'trepidations of the balance.' If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual nameless or odious on the other, and he believes it to be against the Constitution, he must so declare it, — or there is no judge. If Athens comes there to demand that the cup of hemlock be put to the lips of the wisest of men; and he believes that he has not *corrupted the youth, nor omitted to worship the gods of the city, nor introduced new divinities of his own,* he must deliver him, although the thunder light on the unterrified brow.

"This, Sir, expresses, by very general illustration, what I mean when I say I would have him no respecter of persons in judgment. How we are to find, and to keep such an one; by what motives; by what helps; whether by popular and frequent election, or by executive designation, and permanence dependent on good conduct in office alone — we are hereafter to inquire; but that we must have him, — that his price is above rubies, — that he is necessary, if justice, if security, if right are necessary for man, — all of you from the East or West, are, I am sure, unanimous.

"And, finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not yet enough. He must be believed such. I should be glad so far to indulge an old-fashioned and cherished professional sentiment as to say, that I would have

something of venerable and illustrious attach to his character and function, in the judgment and feelings of the commonwealth. But if this should be thought a little above or behind the time, I do not fear that I subject myself to the ridicule of any one, when I claim that he be a man towards whom the love and trust and affectionate admiration of the people should flow; not a man perching for a winter and summer in our court-houses, and then gone forever, but one to whose benevolent face, and bland and dignified manners, and firm administration of the whole learning of the law, we become accustomed: whom our eyes anxiously, not in vain, explore when we enter the temple of justice; towards whom our attachment and trust grow even with the growth of his own eminent reputation. I would have him one who might look back from the venerable last years of Mansfield, or Marshall, and recall such testimonies as these to the great and good Judge: —

"'The young men saw me, and hid themselves; and the aged arose and stood up.

"'The princes refrained talking, and laid their hand upon their mouth.

"'When the ear heard me, then it blessed me, and when the eye saw me, it gave witness to me.

"'Because I delivered the poor that cried, and the fatherless, and him that had none to help him.

"'The blessing of him that was ready to perish came upon me, and I caused the widow's heart to sing for joy.

"'I put on righteousness and it clothed me. My judgment was as a robe and a diadem. I was eyes to the blind, and feet was I to the lame.

"'I was a father to the poor, and the cause which I knew not I searched out.

"'And I brake the jaws of the wicked, and plucked the spoil out of his teeth.'

"Give to the community such a judge, and I care little who makes the rest of the constitution, or what party administers it. It will be a free government, I know. Let us repose, secure, under the shade of a learned, impartial, and trusted magistracy, and we need no more.

"And, now, what system of promotion to office and what tenure of office is surest to produce such a judge? Is it executive appointment during good behavior, with liability, however, to be impeached for good cause, and to be removed by address of the

legislature? or is it election by the people, or appointment by the executive for a limited term of years?

"To every system there are objections. To every system there are sound, or there are spacious objections; objections of theory; objections of fact. Any man's ability is equal to finding, and exaggerating them. What is demanded of us is to compare the good and evil of the different systems, and select the best. Compare them by the test which I have proposed. See which will most certainly give you the judge you need, and adopt that. It may be cavilled at; even as freedom, as religion, as wholesome restraint, as liberty of speech, as the institution and the rights of property, may be cavilled at; but in its fruits, in its product, judged by a long succession of seasons, is its justification and its glory.

"Applying then, Sir, this test, I think the existing system is, out of all comparison, the best one. At the hazard of repeating and weakening the views presented yesterday in the impressive and admirable address of my friend for Manchester, [Mr. Dana,] and in the instructive and able arguments of the two gentlemen, [Mr. Greenleaf and Mr. Parker,] whose established professional reputations gives to them such just weight with you, I beg to submit, briefly, why I think so.

"In the first place, then, it seems to me most clear that the weight of sound general opinion and of the evidence of a trustworthy experience vastly preponderates in favor of it. How the system of popular elections, or of short terms, is actually working now in any one of the States which have recently introduced it; how, still more, it is likely to work there after the influences of the earlier system, the judges which it bred, the habits which it formed, the bars which it trained, have passed away, there is no proof before this Convention deserving one moment's notice. We do not know what is the predominant conviction on this subject, to-day, of those fittest to judge, in any one State. We do know that they cannot yet possibly pronounce on the matter, however close or sagacious their observation. What they have not yet seen, they cannot yet tell. Certainly the result of all that I have been able to gather is a general and strong opinion against the new system; and in favor of a return, if to return were possible, to that which we are yet proud and privileged to call our own. But the evidence is too loose for the slightest consideration. My friend for Manchester read letters yesterday from persons of high character, as he assured us, in New York, deploring the working of her new system; and I

have no doubt that the witnesses are respectable, and the opinions perfectly sound. But other gentlemen guess that very different letters might be obtained, by applying to the right quarters; and the gentlemen from New Bedford, [Mr. French,] is quite confident that the people of that great State — the two or three millions — are in favor of the change, because one, if not two, or even three individuals have personally told him so. And, therefore, I say, we have not here now so much evidence of the practical working of their recent systems anywhere, even as far as it has gone, that any honest lawyer would advise his client to risk a hundred dollars on it.

"But on the other hand, are there not most weighty opinions; is there not the testimony of the widest, and longest, and most satisfactory experience, that executive appointment for good behavior yield the best judge?

"What is British opinion and British experience to the point? On the question what tenure of office promises the best judge, that opinion and that experience may well be averted to. Whether a particular mode, or a particular tenure, is consonant to the republican polity of government, we must settle for ourselves. That is another question. Monarchical and aristocratical principles we will not go for to England or elsewhere, nor buy even learning, impartiality, and titles to trust, at the cost of an anti-republican system. But to know how it practically operates to have the judge dependent on the power that appoints him; dependent for his continuance in office; dependent for his restoration to it; dependent on anything or on anybody but his own official good behavior, and that general responsibility to the legislature and public opinion, 'that spirit of observation and censure which modifies and controls the whole government,' — we may very well consult British or any other experience. The establishment of the tenure of good behavior was a triumph of liberty. It was a triumph of popular liberty against the crown. Before the revolution of 1688, or certainly during the worst years of the Stuart dynasty, the judge held office at the pleasure of the king who appointed him. What was the consequence? He was the tool of the hand that made and unmade him. Scroggs and Jeffreys were but representatives and exemplifications of a system. A whole bench sometimes was packed for the enforcement of some new and more flagrant royal usurpation. Outraged and in mourning by judical subserviency and judicial murder, England discerned at the revolution that her

liberty was incompletely recovered and imperfectly guarded, unless she had judges by whom the boast that an Englishman's house is his castle should be elevated from a phrase to a fact; from an abstract right to secure enjoyment, so that, although that house were 'a cottage with a thatched roof which all the winds might enter, the king could not.' To that end the Act of settlement made the tenure of good behavior a part of the British Constitution; and a late amendment kept the judicial commission alive, as my friend from Manchester yesterday reminded us, notwithstanding the demise of the sovereign, and perfected the system. Sir, the origin of the tenure of good behavior — marking thus an epoch in the progress of liberty; a victory, so to say, of individuality, of private right, of the household hearth of the cottager, of the 'swink'd hedger,' over the crown, — and still more, its more practical workings in the judicial character and function, may well entitle it to thoughtful treatment. Compare the series of British judges since 1688 with that before, and draw your own conclusions. Not that all this improvement, in impartiality, in character, in titles to confidence and affection is due to the change of tenure; but the soundest historians of that Constitution recognize that that is one element of transcendent importance. With its introduction she began to have a government of laws and not men.

"I come to other testimony, other opinions — the lights of a different experience. There is a certain transaction and document called the Federal Constitution. Consult that. In 1787, that Convention, — assisted by the thoughts and discussions of the five years of peace preceding it, upon the subject of national government, — to be constructed on the republican form of polity — into which were gathered all, or almost all, of our great men, in our age of greatness; men of deep studies, ripe wisdom, illustrious reputation, a high spirit of liberty; that Convention, upon a careful survey of the institutions of the States of America, and of those of other countries, and times past and present; upon, I think we cannot doubt, a profound appreciation of the true functions of a judicial department; of the qualities of a good judge; of the best system of appointment and tenure to obtain them — of the true nature of republican government — and how far, consistently with all its characteristic principles and aims, the people may well determine to appoint to office indirectly, rather than directly, and for good behavior, rather than for a limited term, when the great ends of the stability of justice, and the security of private right

prescribe it — incorporated into the great organic law of the Union the principle that judges shall be appointed by the executive power, to hold their office during good behavior.

"The gentleman from Lowell [Mr. Butler] last evening observed, referring, I believe, to the time when our Constitution was adopted, that it was long before the age of the steamboat and railroad and magnetic telegraph. It is true; but do we know better than they knew the nature of man; the nature of the judicial man; what he ought to be to discharge his specific functions aright; how motives, motives of ambition, of fear, of true fame, of high principle, affect him; whether dependence on another power is favorable to independence of the wishes and the will of that other power? Do we know more of republican government and true liberty, and the reconciliations of personal security under due course of law with the loftiest spirit of freedom, than they? Has the advancement of this kind of knowledge quite kept pace with that of the science of the material world?

"I wish, Sir, the time of the Convention would allow me to read entire that paper of 'The Federalist,' the seventy-eighth I believe, in which the principle of the independence of the judiciary is vindicated, and executive appointment, during good behavior, as the means of attaining such independence, is vindicated also. But read it for yourselves. Hear Hamilton and Madison and Jay; for we know from all sources that on this subject that paper expressed the opinions of all, — on the independence of the judiciary, and the means of securing it, — a vast subject adequately illustrated by the highest human intelligence and learning and purity of principle and of public life.

"Sir, it is quite a striking reminiscence that this very paper of 'The Federalist,' which thus maintains the independence of the judiciary, is among the earliest, perhaps the earliest, enunciation and vindication, in this country, of that great truth, that in the American politics, the written Constitution — which is the record of the popular will — is above the law which is the will of the legislature merely; that if the two are in conflict, the law must yield and the Constitution must rule; and that to determine whether such a conflict exists, and if so, to pronounce the law invalid, is, from the nature of the judicial office, the plain duty of the judge. In that paper this fundamental proposition of our system was first presented, or first elaborately presented, to the American mind; its solidity and its value were established by unanswerable reasoning;

and the conclusion that a bench, which was charged with a trust so vast and so delicate, should be as independent as the lot of humanity would admit — of the legislature, of the executive, of the temporary popular majority, whose will it might be required thus to subject to the higher will of the Constitution, was deduced by a moral demonstration. Beware, Sir, lest truth so indissolubly connected — presented together, at first; — adopted together — should die together. Consider whether, when the judge ceases to be independent, the Constitution will not cease to be supreme. If the Constitution does not maintain the judge against the legislature, and the executive, will the judge maintain the Constitution against the legislature and the executive?

"What the working of this principle in the national government has been practically, there is no need to remind you. Recall the series of names, the dead and living, who have illustrated that Bench; advert to the prolonged terms of service of which the country has had the enjoyment; trace the growth of the national jurisprudence; compare it with any other production of American mind or liberty; then trace the progress and tendencies of political opinions, and say if it has not given us stability and security, and yet left our liberties unabridged.

"I find a third argument for the principle of executive appointment during good behavior in this: that it is the existing system in Massachusetts, and it has operated with admirable success. It is not that it exists; it is that it works well. Does it not? Sir, is it for me, or any man, any member of the profession of the law most of all, to rise here, and now, and because our feelings may have sometimes been ruffled or wounded by a passage with the Bench; because we have been dissatisfied by a ruling or a verdict; because our own overwrought brain may have caused us, in some moment, to become forgetful of ourselves; or because a judge may have misunderstood us, and done us an unintentional injury — is it for us to disclaim the praise, so grateful, so just, which the two eminent gentlemen, one of them formerly of New Hampshire [Mr. Parker], one of them formerly of Maine [Mr. Greenleaf], speaking without the partiality of native sons, and from observations made by them from a point of view outside of us, and distant from us — have bestowed on our Bench and our law? Theirs are lips from which even flattery were sweet; but when they concur in reminding you with what respect the decisions of this court are consulted by other courts of learning and character; how far their

reputation has extended; how familiar is the profession of law with the great names of our judicial history; how important a contribution to American jurisprudence, and even to the general products of American thought, our local code composes — do we not believe that they utter their personal convictions, and that the high compliment is as deserved as it is pleasing?

"It has worked well, it is good. Do men gather grapes of thorns, or figs of thistles? If it has continued to us a long succession of men, deeply learned, wholly impartial, deserving, and clothed with the trust, love, and affectionate admiration of all parties of the community, does it not afford a reasonable ground of inference that there is something in such a mode of appointment, and in such a tenure, *intrinsically*, *philosophically* adapted to insure such a result?

"Some criticism has been made on the practical administration of our law, which deserves a passing notice. It requires the less because it has already been replied to.

"The gentleman from New Bedford [Mr. French] told a story of some one, as I understood him, who was about to lose, or had lost, or dared not sue, a note of a hundred dollars, because it would cost him one hundred and fifty dollars to collect it. A very sensible explanation was suggested by the gentleman from Cambridge [Mr. Parker] just now; and I will venture to advise the gentleman from New Bedford in addition, the very first time he sees his friend, to recommend to him to change his lawyer as quickly as he possibly can. As a reason for a change of the Constitution, and the tenure of the judicial office, it seems to me not particularly cogent.

"The same gentleman remembers that your Supreme Court decided that the fugitive-slave law is constitutional; and what makes it the more provoking is, he knows the decision was wrong. Well, Sir, so said the gentleman from Manchester [Mr. Dana]. His sentiments concerning that law and its kindred topics do not differ, I suppose, greatly from those of the member from New Bedford; but what did he add? 'I thank God,' he said, 'that I have the consolation of knowing the decision was made by men as impartial as the lot of humanity would admit; and that if judges were elected by the people of Massachusetts it would hold out no hope of a different decision.' He sees in this, therefore, no cause for altering our judicial system on any view of the decision; and I believe — though I have never heard him say or suggest such a

thing — that my friend's learning and self-distrust — that 'that learned and modest ignorance' which Gibbon recognizes as the last and ripest result of the profound knowledge of a large mind — will lead him to agree with me, that it is *barely possible*, considering how strongly that law excites the feelings, and thus tends to disturb the judgment, considering the vast weight of judicial opinion, and of the opinions of public persons in its favor; recalling the first law on that subject, and the decision in Prigg and Pennsylvania — and who gave the opinion of that Court in that case — that it is *just barely possible* that the gentleman from New Bedford does not certainly know that the decision was wrong. That he thinks it so, and would lay his life down upon it, the energy and the sentiments of his speech sufficiently indicate. My difficulty, like my friend's from Manchester, is to gather out of all this indignation the least particle of cause for a change of the judicial tenure.

"The gentleman from Lowell [Mr. Butler] animadverted somewhat, last evening, on the delays attending the publication of the reports of decisions. I had made some inquiry concerning the facts, but have been completely anticipated in all I would have said by the gentleman from Cambridge [Mr. Parker]. To me his explanation seems perfectly satisfactory; and in no view of such a question would the good sense of the gentleman from Lowell, I think, deem it a reason for so vast an innovation as this, on the existing and ancient system.

"To another portion of that learned gentleman's speech, I have a word to say, in all frankness and all candor. Placing his hand on his heart, he appealed, with great emphasis of manner, to the honor of the bar as represented in this Convention, whether we had not heard complaints of particular acts of some of our judges? Sir, that appeal is entitled to a frank and honorable response. I have known and loved many; many men; many women — of the living and the dead — of the purest and noblest of earth or skies — but I never knew one — I never heard of one — if conspicuous enough to attract a considerable observation, whom the breath of calumny, or of sarcasm, always wholly spared. Did the learned gentleman ever know one? 'Be thou as chaste as ice, as pure as snow, thou shalt not escape calumny.'

"And does he expect that in a profession like ours; overtasked; disappointed in the results of causes; eager for victory; mortified by unexpected defeat; misunderstanding or failing to appreciate

the evidence; the court sometimes itself jaded and mistaken — that we shall not often hear, and often say hasty and harsh things of a judge? I have heard such of every judge I ever saw — however revered in his general character. Did Mansfield escape? Did Marshall? Did Parsons? Did Story? What does it come to as an argument against the particular judge; still more as an argument against a judicial system? Are we to go on altering the mode of appointment, and the tenure, till you get a *corps* of judges against no one of which, no one ever hears anybody say anything?

"But, Sir, I am to answer the learned gentleman's appeal a little farther; and I say upon my honor, that I believe it the general opinion of the bar to-day, its general opinion ever since I entered the profession, that our system of appointment and tenure has operated perfectly well; that the benches and courts have been, and are, learned, impartial, entitled to trust; and that there is not one member of either who, taking his judicial character and life as a whole, is not eminently, or adequately, qualified for his place.

"Turn, now, from the existing system to the substitute which is offered; and see, if you can, how that will work.

"It is not enough to take little objections to that system, in its general working so satisfactory. He who would change it is bound to show that what he proposes in place of it will do better. To this, I say, it is all a sheer conjectural speculation, yet we see and know enough to warrant the most gloomy apprehensions.

"Consider first, for a moment, the motion immediately pending; which proposes the election of judges by the people. I said in the outset, I have no fear of your sustaining it; but for the development of a full view of the general subject, it will justify some attention.

"Gentlemen begin by asking if we are afraid to trust the people. Well, Sir, that is a very cunning question; very cunning indeed. Answer it as you will, they think they have you. If you answer, Yes, — that you are afraid to trust the people, — then they cry out, He blasphemeth. If you answer, No, — that you are not afraid to trust them, — then they reply, Why not permit them to choose their judges?

"Sir, this dilemma creates no difficulty. I might evade it by saying that however ready and however habituated to trust the people, it does not follow that we should desert a system which has succeeded eminently, to see if another will not succeed as well. If

the indirect appointment by the people, appointment through the governor whom they choose, has supplied a succession of excellent judges, why should I trouble them with the direct appointment — however well they might conduct it — which they have not solicited; which they have not expected; about which you dared not open your mouths during the discussion concerning the call of a Convention: in regard to which you gave them — it is more correct to say — every reason to believe you should make no change whatever? Get a Convention by a pledge to the people not to make judges elective — and then tell us we shall make them elective, on pain of being denounced afraid to trust the people! Will such flattery be accepted in atonement for such deception?

"But I prefer meeting this dilemma in another way. It is a question certainly of some nicety to determine what offices the public good prescribes should be filled by direct election of the people; and what should be filled by the appointment of others, as the governor and council, chosen by the people. On the best reflection I have been able to give it, this seems to me a safe general proposition. If the nature of the office be such, the qualifications which it demands, and the stage on which they are to be displayed be such, that the people can judge of those qualifications as well as their agents; and if, still farther, the nature of the office be such that the tremendous ordeal of a severely contested popular election will not in any degree do it injury, — will not deter learned men, if the office needs learning, from aspiring to it; will not tend to make the successful candidate a respecter of persons, if the office requires that he should not be; will not tend to weaken the confidence and trust, and affectionate admiration of the community towards him, if the office requires that such be the sentiments with which he should be regarded, — then the people should choose by direct election. If, on the other hand, from the kind of qualifications demanded, and the place where their display is to be made, an agent of the people, chosen by them for that purpose, can judge of the qualifications better than they can; or if from its nature it demands learning, and the terrors of a party canvass drive learning from the field; or if it demands impartiality and general confidence and the successful candidate of a party is less likely to possess either, — then the indirect appointment by the people, that is, appointment by their agent, is wisest.

"Let me illustrate this test by reference to some proceedings of the Convention. You have already made certain offices elective,

which heretofore were filled by executive appointment—such as those of sheriffs; the attorney-general; district-attorneys, and others.

"Now, within the test just indicated, I do not know why these offices may not be filled by election, if anybody has a fancy for it. Take the case of the sheriff, for instance. He requires energy, courtesy, promptness, — qualities pertaining to character rather, and manner, displayed, so to speak, in the open air; palpable, capable of easy and public appreciation. Besides, his is an office which the freedom and violence of popular elections do not greatly harm. There are certain specific duties to do for a compensation, and if these are well done, it does not much signify what a minority or what anybody thinks of him.

"Totally unlike this in all things is the case of the judge. In the first place, the qualities which fit him for the office are quite peculiar; less palpable, less salient, so to speak, less easily and accurately appreciated by cursory and general notice. They are an uncommon, recondite, and difficult learning, and they are a certain power and turn of mind and cast of character, which, until they come actually, and for a considerable length of time, and in many varieties of circumstances, to be displayed upon the bench itself, may be almost unremarked but by near and professional observers. What the public chiefly see is the effective advocate; him their first thought would be perhaps to make their candidate for judge; yet experience has proved that the best advocate is not necessarily the best judge, — that the two functions exact diverse qualifications, and that brilliant success in one holds out no certain promise of success in the other. A popular election would have been very likely to raise Erskine or Curran to the Bench, if they had selected the situation; but it seems quite certain that one failed as Lord Chancellor, and the other as master of the Rolls, and pretty remarkably, too, considering their extraordinary abilities in the conduct of causes of fact at the bar. I have supposed that Lord Abinger, who, as Mr. Scarlett, won more verdicts than any man in England, did not conspicuously succeed in the exchequer; and that, on the other hand, Lord Tenterden, to name no more, raised to the bench from no practice at all, or none of which the public had seen anything, became, by the fortunate possession of the specific judicial nature, among the most eminent who have presided on it. The truth is, the selection of a judge is a little like that of a professor of the higher mathematics

or of intellectual philosophy. Intimate knowledge of the candidate will detect the presence or the absence of the *specialty* demanded; the kind of knowledge of him which the community may be expected to gain, will not. On this point I submit to the honor and candor of the bar in this body an illustration which is worth considering. It often happens that our clients propose, or that we propose, to associate other counsel with us to aid in presenting the cause to the jury. In such cases we expect and desire them to select their man, and almost always we think the selection a good one. But it sometimes happens, too, that it is decided to submit the cause to a lawyer as a referee. And then do we expect or wish our client to select the referee? Certainly never. That we know we can do better than he, because better than he we appreciate the legal aspects of the case, and the kind of mind which is required to meet them; and we should betray the client, sacrifice the cause, and shamefully neglect a clear duty, if we did not insist on his permitting us, for the protection of his interests intrusted to our care, to appoint his judge. Always he also desires us for his sake to do it. And now, that which we would not advise the single client to do for himself, shall we advise the whole body of our clients to do for themselves?

"But this is by no means the principal objection to making this kind of office elective. Consider, beyond all this, how the office itself is to be affected; its dignity; its just weight; the kind of men who will fill it; their learning; their firmness; their hold on the general confidence — how will these be affected? Who will make the judge? At present he is appointed by a governor, his council concurring, in whom a majority of the whole people have expressed their trust by electing him, and to whom the minority have no objection but his politics; acting under a direct personal responsibility to public opinion; possessing the best conceivable means to ascertain, if he does not know, by inquiry at the right sources, who does, and who does not possess the character of mind and qualities demanded. By such a governor he is appointed; and then afterward he is perfectly independent of him. And how well the appointing power in all hands has done its work, let our judicial annals tell. But, under an elective system, who will make the judge? The young lawyer leaders in the caucus of the prevailing parties will make him. Will they not? Each party is to nominate for the office, if the people are to vote for it, is it not? You know it must be so. How will they nominate? In the great

State caucus, of course, as they nominate for governor. On whom will the judicial nominations be devolved? On the professional members of the caucus, of course. Who will they be? Young, ambitious lawyers, very able, possibly, and very deserving; but not selected by a majority of the whole people, nor by a majority, perhaps, of their own towns, to do anything so important and responsible as to make a judge, — these will nominate him. The party, unless the case is very scandalous indeed, will sustain its regular nominations; and thus practically a handful of caucus leaders, under this system, will appoint the judges of Massachusetts. This is bad enough; because we ought to know who it is that elevates men to an office so important — we ought to have some control over the nominating power — and of these caucus leaders we know nothing; and because, also, they will have motives to nominate altogether irrespective of the fitness of the nominee for the place, on which no governor of this Commonwealth, of any party, has ever acted. This is bad enough. But it is not all, nor the worst. Trace it onwards. So nominated, the candidate is put through a violent election; abused by the press, abused on the stump, charged ten thousand times over with being very little of a lawyer, and a good deal of a knave or boor; and after being tossed on this kind of blanket for some uneasy months, is chosen by a majority of ten votes out of a hundred thousand, and comes into court, breathless, terrified, with perspiration in drops on his brow, wondering how he ever got there, to take his seat on the bench. And in the very first cause he tries, he sees on one side the counsel who procured his nomination in caucus, and has defended him by pen and tongue before the people, and on the other, the most prominent of his assailants; one who has been denying his talents, denying his learning, denying his integrity, denying him every judicial quality and every quality that may define a good man, before half the counties in the state. Is not this about as infallible a recipe as you could wish to make a judge a respecter of persons? Will it not inevitably load him with the supicion of partiality, whether he deserves it or not? Is it happily calculated altogether to fix on him the love, trust, and affectionate admiration of the general community with which you agree he ought to be clothed, as with a robe, or he fills his great office in vain? Who does not shrink from such temptation to be partial? Who does not shrink from the suspicion of being thought so? What studious and learned man, of a true self-respect, fitted the

most preëminently for the magistracy by these very qualities and tastes, would subject himself to an ordeal so coarse, and so inappropriate, for the chance of getting to a position where no human purity or ability could assure him a trial by his merits?

"But you will not make judges elective. What is to be feared is, that instead of attempting a larger mischief, in which you must fail, you will attempt a smaller, in which you may succeed. You will not change the system which has worked so well, very much, you say, but you will change it some; and therefore you will continue to appoint by the governor. But instead of appointing during good behavior, subject to impeachment, and subject to removal by the legislature, you will appoint him for a term of years — five years, seven years, ten years.

"Well, Sir, without repeating that no reason for any change is shown, and that no manner of evidence has been produced to prove that this project of executive appointment for limited terms, has ever succeeded anywhere — pretty important considerations for thoughtful persons, likely to weigh much with the people — there are two objections to this system, which ought, in my judgment, to put it out of every head. And, in the first place, it will assuredly operate to keep the ablest men from the Bench. You all agree that you would have there the ablest man whom three thousand dollars or twenty-one hundred dollars per annum will command. The problem is, one part of the problem is, how shall we get the best judge for that money?

"And now, if my opinion is worth anything, I desire to express it with all possible confidence, that this change of tenure will infallibly reduce the rate of men whom you will have on the Bench. Not every one, in all respects equal to it, can afford it now. It has been said, and is notorious, that it is offered and rejected. The consideration of its permanence is the decisive one in its favor, whoever accepts it. The salary is inadequate, but if it is certain, certain as good judicial behavior — it ought not to be more so — it may be thought enough. Deprive it of that moral makeweight, and it is nothing. Why should a lawyer, accumulating, or living, by his practice, look at a judgeship of ten years? What does he see and fear? At the end of that time he is to descend from the Bench, a man forty-five or fifty or sixty years of age, without a dollar, or certainly requiring some means of increasing his income. Every old client is lost by this time, and he is to begin life as he began it twenty or thirty years before. Not

quite so, even. Then he was young, energetic, and sanguine. He is older now, and is less disposed to the contentious efforts of the law. More than that, he is less equal to them for another reason than the want of youth. If he has, during the full term of ten years, been good for anything; if he has been 'a judge, altogether a judge, and nothing but a judge,' then his whole intellectual character and habits will have undergone a change, itself incapable of change. He will have grown out of the lawyer into the magistrate. He will have put off the gown of the bar, and have assumed the more graceful and reverend ermine of the Bench. The mental habits, the mental faults of the advocate, the faults ascribed by satire to the advocate, the faults or habits of his character, the zeal, the constant energy bestowed on all causes alike; the tendencies, and the power to aggravate and intensify one side of a thesis, and forget or allow inadequate importance to the other — these, if he has been a good judge, or tried his best to be a good judge for ten years, he has lost, he has conquered, and has acquired in their place that calmer and that fairer capacity to see the thing, fact, or law, just as it is. Thus changed, it will be painful to attempt to recover the advocate again; it will be impracticable, if it is attempted. To regain business, he must find new clients; to find or keep them, he must make himself over again. Accordingly, how rare are the cases where any man above the age of forty, after having served ten years on the Bench, seeking to cultivate judicial habits, and win a true judicial fame, has returned to a full business at the bar. I never heard of one. Such a retired judge may act as a referee. He may engage somewhat in chamber practice, as it is called, though the result of all my observation has been, that unless he *can attend his opinions through court;* can there explain and defend them; *unless he can keep his hand so much in that he feels and knows at all times which way the judicial mind is tending on the open questions of the law* — his chamber practice holds out a pretty slender promise for the decline of a life unprovided for. He who would be a lawyer, must unite the study of the books and the daily practice of the courts, or his very learning will lead him astray.

"I have been amused at the excellent reasons given to show why an able man, at the head of the bar, in full practice, forty years of age, a growing family and no property, should just as soon accept a judgeship for ten years as during good behavior. Some say a judge never lives but ten years on the Bench — or thirteen at the

outside — anyhow. They show statistics for it. They propose, therefore, to go to such a man and tender him the situation. He will inconsiderately answer that he should like the Bench; thinks he could do something for the law; should rejoice to give his life to it; but that the prospect of coming off at fifty, and going back to begin battling it again with 'these younger strengths,' is too dreary, and he must decline. 'Bless you,' say the gentlemen, 'don't trouble yourself about that, if that is all. You can't live but thirteen years, the best way you can fix it. Here is the secretary's report — with a printed list as long as a Harvard College catalogue — putting that out of all question!' Do you think this will persuade him? Does he expect to die in ten years? Who does so? Did the names on these statistics?

"Others guess that the ten-years judge will be reappointed, if he behaves well. But unless he is a very weak man indeed, will he rely on that? Who will assure it to him? Does he not know enough of life to know how easy it will be, after he has served the State, the law, his conscience and his God for the stipulated term; after the performance of his duty has made this ambitious young lawyer or that powerful client his enemy for life; after having thus stood in the way of a greedy competitor too long — how easy it will be to bring influences to bear on a new governor, just come in at the head of a flushed and eager party, to allow the old judge's commission to expire, and appoint the right sort of a man in his place? Does he not know how easy it will be to say, 'Yes, he is a good judge enough, but no better than a dozen others who have just put you in power; there are advantages in seating a man on the Bench who is fresh from the bar; there is no injustice to the incumbent — did n't he know that he ran this risk?' Too well he knows it, Sir, to be tickled by the chance of 'finding the doom of man reversed for him,' and he will reject the offer.

"Herein is great and certain evil. How you can disregard it — how you can fail to appreciate what an obvious piece of good economy it is; economy worthy of statesmen — binding on your conscience; to so construct your system as to gain for the bench the best man whom three thousand dollars per annum can be made to command, passes all comprehension. Surely you will not reply that there 'will be enough others to take it.' If the tendency of what you propose is appreciably to lessen the chances of obtaining the best, is it any excuse to say that fools will rush in where others will not tread?

"But there is still another difficulty. He who does accept it, and performs as an hireling his day, will not only be an ordinary man comparatively, at the start, but he holds a place, and is subjected to influences, under which it will be impossible to maintain impartiality, and the reputation of impartiality; impossible to earn and keep that trust, and confidence, and affectionate and respectful regard, which the judge must have, or he is but half a judge.

"I have sometimes thought that the tenure of good behavior has one effect a little like that which is produced by making the marriage tie indissoluble. If the 'contract which renovates the world' were at the pleasure of both parties, they would sometimes, often, quarrel and bring about a dissolution in a month. But they know they have embarked for life — for good and ill — for better and worse; and they bear with one another; they excuse one another — they help one another — they make each other to be that which their eyes and their hearts desire. A little so in the relation of the judge to the bar and the community. You want to invest him with honor, love, and confidence. If every time when he rules on a piece of evidence, or charges the jury, a young lawyer can say, half aloud in the bar, or his disappointed client can go to the next tavern to say, 'My good fellow, we will have you down here in a year or two — you shall answer for this — make the most of your time' — and so forth; is it favorable to the culture of such sentiments? Does it tend to beget that state of mind towards him in the community which prompts 'the ear to bless him, and the eye to give witness to him?' Does it tend in him to 'ripen that dignity of disposition which grows with the growth of an illustrious reputation; and becomes a sort of pledge to the public for security?' Show to the bar, and to the people, a judge by whom justice is to be dispensed for a lifetime, and all become mutually coöperative, respectful, and attached.

"And still further. This ten-years judge of yours is placed in a situation where he is in extreme danger of feeling, and of being suspected of feeling so anxious a desire to secure his reappointment, as to detract, justly or unjustly, somewhat from that confidence in him without which there is no judge. It is easy for the gentleman from Abington [Mr. Keyes] to feel and express, with his habitual energy, indignation at the craven spirit which could stoop to do anything to prolong his term of office. It is easy, but is it to the purpose? All systems of judicial appointment and tenure suppose

the judge to be a mortal man, after all; and all of them that are wise, and well tried, aim to fortify, guard, and help that which his Maker has left fallible and infirm. To inveigh against the lot of humanity is idle. Our business is to make the best of it; to assist its weakness: make the most of its virtue; by no means, by no means to lead it into any manner of temptation. He censures God, I have heard, who quarrels with the imperfections of man. Do you not, however, tempt the judge, as his last years are coming, to cast about for reappointment; to favor a little more this important party or this important counsel, by whom the patronage of the future is to be dispensed? He will desire to keep his place, will he not? You have disqualified him for the more active practice of his profession. He needs its remuneration. Those whom he loves depend on it. The man who can give it or withhold it, is before him for what he calls justice; on the other side is a stranger without a name. Have you placed him in no peril? Have you so framed your system, as to do all that human wisdom can do — to 'secure a trial as impartial as the lot of humanity will admit'? If not, are we quite equal to the great work we have taken in hand?

"There are two or three more general observations with which I leave the subject, which the pressure on your time, and my own state of health, unfit me for thoroughly discussing.

"In constructing our judicial system, it seems to me not unwise so to do it, that it shall rather operate, if possible, to induce young lawyers to aspire to the honors of the bench, not by means of party politics, but by devoting themselves to the still and deep studies of this glorious science of the law. A republic, it is said, is one great scramble for office, from the highest to the lowest in the State. The tendencies certainly are to make every place a spoil for the victor, and to present to abilities and ambition *active service in the ranks of party, victory under the banner, and by the warfare of party*, as the quickest and easiest means of winning every one. How full of danger to justice, and to security, and to liberty, are such tendencies, I cannot here and now pause to consider. These very changes of the judicial system, facilitating the chances of getting on the bench by party merits and party titles, will give strength incalculable to such tendencies. How much wiser to leave it as now, were it only to present motives to the better youth of the profession to withdraw from a too active and vehement political life; to conceive, in the solitude of their libraries, the idea of a great judicial fame and usefulness; and by profound study and

the manly practice of the profession alone seek to realize it; to so prepare themselves, in mind, attainments, character, to become judges by being lawyers only, that when the ermine should rest on them, it should find, as was said of Jay — as might be said of more than one on the bench of both Courts, of one trained by our system for the bench of the Supreme National Court — it should find "nothing that was not whiter than itself."

"I do not know how far it is needful to take notice of an objection by the gentleman from Fall River [Mr. Hooper], and less or more by others, to the existing system, on the ground that it is monarchical, or anti-republican, or somehow inconsistent with our general theories of liberty. He has dwelt a good deal on it; he says we might just as well appoint a governor or a representative for life, or good behavior, as a judge; that it is fatally incompatible with our frame of government, and the great principles on which it reposes. One word to this. It seems to me that such an argument forgets that our political system, while it is purely and intensely republican, within all theories, aims to accomplish a twofold object, to wit: liberty and security. To accomplish this twofold object we have established a twofold set of institutions and instrumentalities; some of them designed to develop and give utterance to one; some of them designed to provide permanently and constantly for the other; some of them designed to bring out the popular will in its utmost intensity of utterance; some of them designed to secure life, and liberty, and character, and happiness, and property, and equal and exact justice, against all will, and against all power. These institutions and instrumentalities in their immediate mechanism and workings are as distinct and diverse, one from the other, as they are in their offices, and in their ends. But each one is the more perfect for the separation; and the aggregate result is our own Massachusetts.

"Thus in the law-making department, and in the whole department of elections to office of those who make and those who execute the law, you give the utmost assistance to the expression of liberty. You give the choice to the people. You make it an annual choice; you give it to the majority; you make, moreover, a free press; you privilege debate; you give freedom to worship God according only to the dictates of the individual conscience. These are the mansions of liberty; here are her arms, and here her chariot. In these institutions we provide for her: we testify our

devotion to her; we show forth how good and how gracious she is — what energies she kindles; what happiness she scatters; what virtues, what talents wait on her — vivifying every atom, living in every nerve, beating in every pulsation.

" But to the end that one man, that the majority, may not deprive any of life, liberty, property, the opportunity of seeking happiness, there are institutions of security. There is a Constitution to control the government. There is a separation of departments of government. There is a judiciary to interpret and administer the laws, ' that every man may find his *security* therein.' And in constituting these provisions for security, you may have regard mainly to the specific and separate objects which they have in view. You may very fitly appoint a few judges only. You may very fitly so appoint them as to secure learning, impartiality, the love and confidence of the State; because thus best they will accomplish the sole ends for which they are created at all. If to those ends, too, it has been found, in the long run, as human nature is, that it is better to give them a tenure of good behavior, you may do so without departing in the least degree from either of the two great objects of our political system. You promote one of them directly by doing so. You do it without outrage on the other. Your security is greater; your liberty is not less. You assign to liberty her place, her stage, her emotions, her ceremonies; you assign to law and justice theirs. The stage, the emotions, the visible presence of liberty, are in the mass meeting; the procession by torchlight; at the polls; in the halls of legislation; in the voices of the press; in the freedom of political speech; in the energy, intelligence and hope, which pervade the mass; in the silent, unreturning tide of progression. But there is another apartment, smaller, humbler, more quiet, down in the basement story of our capitol — appropriated to justice, to security, to reason, to restraint; where there is no respect of persons; where there is no high nor low, no strong nor weak; where will is nothing, and power is nothing, and numbers are nothing — and all are equal, and all secure, before the law. Is it a sound objection to your system, that in that apartment you do not find the symbols, the cap, the flag of freedom? Is it any objection to a court-room that you cannot hold a mass meeting in it while a trial is proceeding? Is liberty abridged, because the procession returning by torchlight, from celebrating anticipated or actual party victory, cannot pull down a half dozen houses of the opposition with im-

punity; and because its leaders awake from the intoxications of her *saturnalia* to find themselves in jail for a riot? *Is it any objection that every object of the political system is not equally provided for in every part of it?* No, Sir. 'Every thing in its place, and a place for every thing!' *If the result is an aggregate of social and political perfection, absolute security combined with as much liberty as you can live in,* that is the state for you! Thank God for that; let the flag wave over it; die for it!

"One word only, further, and I leave this subject. It has been maintained, with great force of argument, by my friend for Manchester, that there is no call by the people for any change of the judicial system. Certainly there is no proof of such a call. The documentary history of the Convention utterly disproves it. But that topic is exhausted. I wished to add only, that my own observation, as far as it has gone, disproves it too. I have lost a good many causes, first and last; and I hope to try, and expect to lose, a good many more; but I never heard a client in my life, however dissatisfied with the verdict, or the charge, say a word about changing the tenure of the judicial office. I greatly doubt, if I have heard as many as three express themselves dissatisfied with the judge; though times without number they have regretted that he found himself compelled to go against them. My own tenure I have often thought in danger — but I am yet to see the first client who expressed a thought of meddling with that of the court. What is true of those clients, is true of the whole people of Massachusetts. Sir, that people have two traits of character — just as our political system in which that character is shown forth has two great ends. They love liberty; that is one trait. They love it, and they possess it to their heart's content. Free as storms to-day do they not know it, and feel it — every one of them, from the sea to the Green Mountains? But there is another side to their character; and that is the old Anglo-Saxon instinct of property; the rational and the creditable desire to be secure in life, in reputation, in the earnings of daily labor, in the little all which makes up the treasures and the dear charities of the humblest home; the desire to feel certain when they come to die that the last will shall be kept, the smallest legacy of affection shall reach its object, although the giver is in his grave; this desire and the sound sense to know that a learned, impartial, and honored judiciary is the only means of having it indulged. They have nothing timorous in them, as touching the largest liberty.

They rather like the exhilaration of crowding sail on the noble old ship, and giving her to scud away before a fourteen-knot breeze; but they know, too, that if the storm comes on to blow; and the masts go overboard; and the gun-deck is rolled under water; and the lee shore, edged with foam, thunders under her stern, that the sheet anchor and best bower then are every thing! Give them good ground-tackle, and they will carry her round the world, and back again, till there shall be no more sea."